In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 1307

EDWARD M. HELIGMAN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. A1-A8) is reported at 407 F.2d 448.

JURISDICTION

The judgment of the court of appeals was entered on March 5, 1969 (Pet. A 9). A petition for rehearing was denied on March 27, 1969 (Pet. A 11). The petition for a writ of certiorari was filed on April 24,

1969. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254(1).

QUESTION PRESENTED

Whether petitioner's privilege against self-incrimination excused his failure to file income tax returns for a corporation of which he was president.

STATEMENT

After waiving jury trial, petitioner was convicted by the United States District Court for the Eastern District of Missouri of having wilfully failed to file income tax returns for the years 1961 and 1962 on behalf of the E & H Leasing Company. Petitioner was the president of the corporation and the officer responsible for filing such returns. He was sentenced to concurrent one year terms of imprisonment on each of the two counts of the indictment (R. 1, 85, 87).[1]

Petitioner moved to dismiss the indictment on the grounds that execution and filing of the corporation's tax returns would have compelled him to be a witness against himself and that Section 7203 of the Internal Revenue Code of 1954 was invalid in so far as it required him to file such returns (R. 12). It was stipulated (R. 16) that on December 4, 1962, petitioner was charged by information with criminal violations of the Interstate Commerce Act. The information (R. 37-83) contained sixty-five counts, each of which charged petitioner with aiding and abetting Refriger-

[1] "R." references are to the transcript of record on file in this Court.

ated Food Distributors, Inc., in unauthorized interstate carriage of merchandise on a particular date between October 3, 1960 and April 13, 1962. It alleged (R. 82) that petitioner had previously been convicted of similar offenses on November 17, 1958, and April 4, 1960. On March 29, 1963, petitioner pleaded guilty to thirty counts and was fined $15,000. In a related civil proceeding to enjoin further violations, the district court entered findings (R. 27) that the 1958 and 1960 pleas of guilty had been entered by the E & H Leasing Company "and its president, Edward Heligman, who was in active control and management of the transportation operations of the E & H Leasing Company."

The district court denied the motion.

ARGUMENT

There is no merit to petitioner's contention that the necessity of identifying himself as president of E & H Leasing Co. on its tax returns created a real and substantial danger of self-incrimination (Pet. 10) and of furnishing "substantial evidence to link him with criminal prosecutions either contemplated by the government or actually pending" (Pet. 13). He could readily have procured another corporate officer or attorney to sign and file the return. See *Marchetti* v. *United States*, 390 U.S. 39, 53. Moreover, he had been identified as the corporation's president by his pleas of guilty in previous prosecutions, and, as pointed out by the court of appeals (Pet. A8), not only is such information a matter of public record, but petitioner admitted in the court of appeals that the gov-

ernment at all pertinent times knew he was president of the E and H Leasing Company. Such required information "neither led nor could have led to a discovery of his crime." *Heike* v. *United States*, 227 U.S. 131, 143. The professed hazards were "merely imaginary and unsubstantial." *Marchetti*, *supra*, 390 U.S. at 48.

The cases on which petitioner relies repeatedly distinguish the obligation to file ordinary tax returns as one to which their reasoning does not apply. Thus, the reporting requirements of the income tax laws are wholly neutral, being directed at the public at large. *Albertson* v. *Subversive Activities Control Board*, 382 U.S. 70, 79. They are not directed at persons "inherently suspect of criminal activities." *Grosso* v. *United States*, 390 U.S. 62, 68; *Leary* v. *United States*, decided May 19, 1969, slip op. p. 10. Petitioner was not entitled to "draw a conjurer's circle around the whole matter by his own declaration that to write any word upon the government blank would bring him into danger of the law." *United States* v. *Sullivan*, 274 U.S. 259, 264. Indeed, petitioner has never alleged that he actually entertained any fear of self-incrimination in this case. His motion to dismiss was based solely on the stipulated facts.

Finally, there is no merit to petitioner's attempt to distinguish *Sullivan* on the ground that petitioner is not the person liable to tax but is being required to register the corporation (Pet. 9). As noted by the court of appeals (Pet. A7), a corporation officer may not refuse to produce its records on the grounds of self-incrimination. *Wilson* v. *United States*, 221 U.S.

361. His duty extends as well to making validly required reports to the government. In *Baltimore and Ohio Railroad Co.* v. *Interstate Commerce Commission*, 221 U.S. 612, it was held that corporation officers could validly be required to submit reports showing excessive hours worked by employees even though the officers might be subject to prosecution. The opinion stated (221 U.S. at 623):

> And, with regard to the keeping of suitable records of corporate administration, and the making of reports of corporate action, where these are ordered by the Commission under the authority of Congress, the officers of the corporation, by virtue of the assumption of their duties as such, are bound by the coroprate obligation and cannot claim a personal privilege in hostility to the requirement. *Wilson* v. *United States, supra.*

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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